



September 20, 2001

Ms. Pamela Smith  
Assistant General Counsel  
Texas Department of Public Safety  
P.O. Box 4087  
Austin, Texas 78773-0001

OR2001-4219

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 152210.

The Texas Department of Public Safety (the "department") received a request for "confirmation of the existence of DNA samples; the production of the actual DNA samples if they exist; samples of DNA left for retesting from the *Leslie Blaylark vs. State of Texas* [case]; all reports and other documents relating to the testing of any samples in the case of *Blaylark vs. State of Texas*; indictments of any DPS officers involved in tampering with DNA testing; and the names of officers involved in DNA testing who were indicted." You state that the department has no information regarding any of its officers or employees being indicted for tampering with DNA testing. You also state that you believe that the requestor is restricting his request for the confirmation of the existence of DNA samples and the production of DNA samples to the case of *Blaylark v. State of Texas*. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

You argue that to the extent the department holds information responsive to the request, such information must be withheld from the requestor under section 552.101 in conjunction with section 411.153 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 411.153 provides in pertinent part that a "DNA record stored in the DNA database is confidential and is not subject to disclosure under the open records law, chapter 552 [of the Government Code]." Gov't Code § 411.153(a). "DNA record" means "the results of a forensic DNA analysis performed by a DNA laboratory and, if known, the name of the person who is the subject of the analysis. *Id.* § 411.141(4). Pursuant to section 411.147, the department may release DNA record information only where specifically authorized. *See Id.* § 411.147(c), (d), (e). None of the release provisions apply in this instance. Accordingly, we conclude that the department must withhold the submitted information under section 552.101 in conjunction with section 411.153 of the Government Code. Because section 552.101 is dispositive, we do not address your section 552.108 claim.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

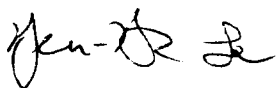
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Yen-Ha Le', with a stylized flourish at the end.

Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/DKB/seg

Ref: ID# 152210

Enc. Submitted documents

c: Mr. Melvin Reed  
Melvin Reed Investigation  
P.O. Box 91146  
Austin, Texas 78709  
(w/o enclosures)